

HONORABLE TIMOTHY W. DORE

HEARING DATE: MONDAY, NOVEMBER 19, 2018
HEARING TIME: 9:00 A.M.
LOCATION: SEATTLE, COURTROOM 8106
RESPONSE DATE: AT TIME OF HEARING

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re

SEATTLE PROTON CENTER, LLC ¹

Debtors.

Lead Case No. 18-14380-TWD

DECLARATION OF ANNA KARIN
ANDREWS IN SUPPORT OF FIRST DAY
MOTIONS

Anna Karin Andrews declares as follows:

1. I am a Director of Seattle Proton Center Holdings and of Procure Seattle Holdings, LLC, and I am President of Seattle Proton Center, LLC. I have personal knowledge of the facts set forth herein. I make this Declaration in support of First Day Motions. Capitalized terms not defined in this Declaration have their meanings as ascribed in applicable First Day Motions.

Background

2. The Debtors are three related companies. The parent company Seattle Proton Center Holdings (“Newco”) is a Washington non-profit that wholly owns, Procure Seattle Holdings, LLC (“Midco”). Midco, in turn, wholly owns Seattle Proton Center, LLC (“Opco”). Opco owns and

¹ The Debtors are Seattle Proton Center, LLC, Bankruptcy Case No. 18-14380, Procure Seattle Holdings, LLC, Bankruptcy Case No. 18-14381, and Seattle Proton Center Holdings, Bankruptcy Case No. 18-14382.

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SUPPORT OF FIRST DAY MOTIONS – Page 1

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operates the SCCA Proton Therapy Center (the “Center”), a 53,000 square foot cancer treatment center located on the campus of UW Medicine/Northwest Hospital in the Northgate area of Seattle, Washington.

3. The Center operates as a stand-alone outpatient proton radiation treatment center, serving oncology patients from the Pacific Northwest. Construction on the Center began in 2010 and patient treatment operations began on March 5, 2013.

4. As discussed herein, proton radiation is a focused form of radiation that does less damage to surrounding tissue and is particularly effective in treating certain types of cancer.

Original Ownership/SCCA and Procure Washington

5. Midco was formed in the state of Delaware in August 2009 and, until January 29, 2016, was jointly owned by Procure Washington Holdings, LLC (“Procure Washington”) and Seattle Cancer Care Alliance, a State of Washington non-profit corporation (“SCCA”).

6. SCCA’s members include the Fred Hutchinson Cancer Research Center, University of Washington, and Seattle Children’s Healthcare System. Procure Washington’s member, Procure Treatment Centers, Inc., a Delaware corporation (“Procure Parent”) was essentially a national umbrella holding company that developed four early proton treatment centers around the country.

7. Midco was formed by Procure Washington and SCCA to construct and operate a proton therapy facility in Seattle for use in the treatment of cancer.

8. Opco was created as the operating entity. It owns and operates the Center. As discussed below, in 2015, the Center became independent of the Procure entities upon dissolving its relationship with Procure Parent and Procure Washington and becoming a subsidiary of an independent Washington non-profit (Newco).

1 Ground Lease

2 9. The Center is built on land leased under a long term Ground Lease Agreement, dated
3 January 20, 2011, between Opco and UW Medicine/Northwest as to property located at 1570 North
4 115th Street, Seattle, Washington 98133. The Center's buildings and assets are located on this leased
5 property.

6 IBA

7 10. Opco's major medical equipment vendor is IBA Proton Therapy Inc., a Delaware
8 corporation ("IBA PT"). In addition to providing the original equipment needed to operate the
9 Center, IBA PT provides the Center substantial ongoing technical engineering and support for the
10 proton beam equipment as well as its daily operational activities. IBA PT's parent company, Ion
11 Beam Applications, S.A., a Belgian Société Anonyme. ("IBA Parent"), provided financing to support
12 Opco's operations.

13 11. On June 30, 2010, IBA PT, IBA Parent, and Opco executed a Proton System
14 Equipment Purchase Agreement, as Amended and Restated by that August 24, 2010, Amended and
15 Restated Proton System Purchase Agreement, for the supply of proton therapy equipment to be used
16 in the Center ("Original IBA Equipment Purchase Agreement"). On June 30, 2010, IBA PT, IBA
17 Parent, and Opco also executed a Proton System Equipment Service Agreement, as Amended and
18 Restated by that August 24, 2010, Amended and Restated Proton System Service Agreement, for the
19 operation and service of the proton therapy equipment to be used in the Center ("Original IBA
20 Equipment Services Agreement"). The Original IBA Equipment Services Agreement was amended
21 via that certain Addendum to Amended and Restated Proton System Equipment Service Agreement
22 dated as of August 5, 2013 ("Addendum 1") and that certain Addendum 2 to Amended and Restated
23 Proton System Equipment Service Agreement dated as of August 31, 2015 ("Addendum 2"). The

1 Original IBA Equipment Services Agreement as amended by Addendum 1 and Addendum 2, are
2 referred to as the “Amended IBA Equipment Services Agreement”.

3 12. On December 31, 2008, Procure Parent and IBA Parent entered into a Preferred
4 Supplier Agreement under which IBA Parent committed to provide Procure Parent standby funds with
5 respect to selected projects via a standby letter of credit (“Original SBLOC”). On January 20, 2011,
6 Procure Parent and IBA entered into a Repayment Agreement with respect to draws that had made
7 under the Original SBLOC. Standby funds issued as a result of draws under the Original SBLOC
8 were transferred by Dexia Bank Belgium, S.A. (the Original SBLOC issuer) to an account belonging
9 to the Original SBLOC beneficiary (Opco) subject to repayment by Procure Parent. IBA Parent, in
10 turn, guaranteed the repayment of amounts owed by Procure Parent.

11 13. In addition, on January 20, 2011, IBA Parent and Procure Parent entered into a Standby
12 Equity Bridge Loan Agreement under which IBA Parent agreed to loan Procure Parent \$5,000,000 for
13 Procure Washington’s contribution to Opco (“Original SBEB”).

14 SCCA

15 14. On August 24, 2010, Opco and SCCA entered into a Professional Services Agreement
16 (“Original SCCA Services Agreement”) and a Clinical Affiliation Agreement. Under the Original
17 SCCA Services Agreement, SCCA agreed to furnish Opco with qualified physicians and clinical
18 professionals to provide services to Opco’s patients. The Clinical Affiliation Agreement provides for
19 Opco’s operation under the SCCA brand and for Opco and SCCA’s sharing of clinical quality
20 standards.

21 Senior Secured Lender Financing

22 15. In August 2010, Opco borrowed approximately \$117 million from the Senior Secured
23 Lenders (discussed in more detail below) under a Credit Agreement dated as of August 24, 2010 by

1 and among Opco and the Senior Secured Lenders (the “Credit Agreement”). The proceeds of these
2 loans were used by the Opco for a variety of business purposes, including (but not limited to) the
3 initial construction and startup of the Opco.

4 2015/2016 Restructure of Ownership and Financing (“Initial Restructure”)

5 Senior Secured Lender Restructure and Ownership Restructure

6 16. In August, 2015, Opco owed the Senior Secured Lenders approximately \$124 million
7 under the Credit Agreement. On August 31, 2015, Opco entered into an Amended and Restated
8 Credit Agreement with the Senior Secured Lenders (with associated loan documents, the “Amended
9 Credit Agreement”). Among other provisions, the Amended Credit Agreement maturity date to
10 August 31, 2018, which has since been extended to April 1, 2019.

11 17. On January 29, 2016, Procure Washington and SCCA transferred all of the equity in
12 Midco to Newco, a newly formed Washington taxable not-for-profit corporation. Newco became the
13 sole member of Midco as a result of the transaction and assumed control of Midco and Opco.

14 Contemporaneous Additional Financial Restructure

15 -IBA and IBA Parent

-IBA Equipment Agreement.

16 18. In 2015, Opco owed IBA amounts under the Original IBA Equipment Services
17 Agreement which Opco and IBA had consensually deferred. As part of the Initial Restructure, Opco
18 and IBA entered into Addendum 2 to the Original IBA Equipment Services Agreement under which
19 IBA agreed to restructure this deferred compensation as set forth in the Amended Credit Agreement
20 (“Deferred IBA Compensation”). As of August 31, 2018, IBA was owed approximately \$7,513,540
21 in Deferred IBA Compensation under the Amended IBA Equipment Services Agreement.
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-IBA and IBA Parent

19. In 2015, approximately \$5 million was owed by Procure Parent under the SBEB Note. As part of the Initial Restructure, (i) IBA Parent released Procure Parent from liability under the SBEB Note; and (ii) Opco assumed the SBEB Note obligation on a deeply subordinated basis as set forth in the Amended Credit Agreement by executing an August 31, 2015, replacement note in favor of IBA Parent reflecting these releases and transfers ("Replacement SBEB"). As of August 31, 2018, the amount owing under the Replacement SBEB was approximately \$5,431,045.

20. In 2015, no amounts were owed under the SBLOC by Procure Parent. As part of the Initial Restructure, (i) IBA Parent released Procure Parent from liability under the SBLOC; and (ii) Opco assumed future SBLOC repayment obligations (in the event of any draws on the SBLOC) on a deeply subordinated basis as set forth in the Amended Credit Agreement. On August 31, 2015, Opco executed a replacement Standby Letter of Credit Note reflecting these releases and transfers ("Replacement SBLOC"). As of August 31, 2018, the amount owing under the Replacement SBLOC was approximately \$557,438.00.

SCCA Services Agreement

21. In 2015, Opco owed SCCA approximately \$1.8 million in unpaid fees for physician coverage provided during the early years of the Center's operation under the Original SCCA Services Agreement. As part of the Initial Restructure, SCCA agreed to restructure payment of the physician fees as set forth in the Amended Credit Agreement, and in an Amended and Restated Professional Services Agreement, dated as of August 31, 2015, between Opco and SCCA ("Amended SCCA Services Agreement"). As of August 31, 2018, Opco owed SCCA approximately \$2,012,515.00, including interest, in physician fees under the Amended SCCA Services Agreement.

Current Restructure

22. Since its opening in 2013, the Center has gradually increased patient volumes to support a sustainable business model. During the Center's establishment, however, Procure Parent forecasted projections for the Center's operations and financial performance that, for a variety of factors, were not realized. Therefore, the purpose of the current restructure is to "right size" the debt going forward to fit the Center's operations and financial performance.

23. Building an innovative cancer treatment center around a groundbreaking therapy is highly resource-intensive. The cost to construct and commence startup operations at the Center resulted in an original senior secured debt level which the Center could not service. The Center began operations when proton beam treatment was not yet a widespread form of treatment, and there was limited data and experience on which to base financial performance projections. Despite the Center's progress in growing patient volumes, financial performance has not met Procure Parent's ambitious initial projections during the initial period of operation.

24. The Center has successfully built a sustainable patient referral infrastructure over the years, and – as is often the case with new treatments of this type – this process has taken time. One important factor that contributed to slower-than-expected growth has been the reluctance of insurers in the Pacific Northwest region to add new treatments to their coverage. This perspective has informed the insurers' conservative approach to covering proton radiation treatment, and the Center has struggled to ensure that qualified patients who would benefit from proton treatment over other treatment modalities are granted insurance coverage. Over time, the Center has made consistent gains in demonstrating to insurers that providing coverage for proton treatment offers an important – often life-saving – option for their members.

1 25. The Center has engaged in extensive negotiations with its primary constituents (the
2 Senior Secured Lenders, IBA, and SCCA) over the better part of the past year to reach the terms of the
3 agreed restructure. In conjunction with these negotiations, the Debtors, the Senior Secured Lenders,
4 IBA, and SCCA negotiated and entered into a Restructuring Support Agreement dated as of
5 November 6, 2018 that set forth the material terms of the current restructure, including terms
6 addressing the payoff and satisfaction of all of the existing debt of the Center through notes payable to
7 IBA and SCCA and by using the proceeds from a bond issuance (described below). Ultimately, the
8 parties formalized their agreements in a binding Plan Support Agreement. Each of the parties have
9 agreed to the terms of the Plan, as described herein.

10 **Prepetition Plan Solicitation and Request for Combined Hearing**

11 26. In accordance with the Plan Support Agreement, the Debtors commenced prepetition,
12 out-of-court, solicitation of votes on November 12, 2018. The Debtors caused their counsel, Bush
13 Kornfeld LLP, to distribute copies of the Disclosure Statement In Support of Debtors' Joint
14 Prepackaged Chapter 11 Plan of Reorganization Disclosure Statement, the Plan, and the appropriate
15 ballot to each entity entitled to vote to accept or reject the Plan.

16 27. The Debtors seek entry of the Scheduling Order for the Combined Hearing in order to
17 expedite the Debtors' emergence from bankruptcy and minimize adverse effects of the chapter 11
18 filings upon the Debtors' business and going concern value.

19 28. The Debtors' Plan provides for refinancing of the Senior Secured Debt through
20 issuance of municipal taxable bonds. Substantial work and planning has occurred prepetition to
21 arrange for this bond issuance post-confirmation. Due to the dynamics of the bond market, it is
22 important to complete this issuance before the end of 2018, if at all possible. In order to have a
23 realistic opportunity to complete and close the issuance on this timetable, it is imperative that the Plan

1 be confirmed no later than the end of November or the first few days of December. For these reasons,
2 along with the fact that all of the impaired classes of creditors have reviewed and accepted the
3 Disclosure Statement prepetition and have already voted to accept the Plan, the Debtors request that
4 the Court combine approval of the Disclosure Statement with the hearing on Plan confirmation.

5 **Waiver of Patient Care Ombudsman**

6 29. The Center operates as a stand-alone outpatient-only proton radiation treatment center,
7 providing a highly targeted form of radiation therapy used in the treatment of cancer and
8 noncancerous tumors. Patients receiving proton therapy require treatment five days a week for
9 anywhere between one to nine consecutive weeks, depending on the disease site and treatment plan.

10 30. The Center is the only proton facility within a 1,200-mile radius, and is the only proton
11 therapy center located in the Pacific Northwest. The Center treats patients from the WWAMIO
12 (Washington, Wyoming, Alaska, Montana, Idaho, and Oregon) region, as well as patients from
13 Hawaii, Canada, and beyond. Prior to the Center opening in 2013, patients requiring proton therapy
14 had to travel to California, Texas, or the East Coast. Cancer patients in this region are therefore
15 dependent upon the Center as their only regional option for proton therapy treatments.

16 31. Opco is required to maintain a Radioactive Materials License issued by the State of
17 Washington given its handling of radioactive materials, and therefore the Center is subject to annual
18 Department of Health inspections to assure compliance. The most recent Department of Health
19 inspection was completed on March 15, 2018 with a full compliance report.

20 32. The Center also participates in a Coordinated Quality Improvement Program governed
21 by the State of Washington's Department of Health. The Center prepares and submits a Coordinated
22 Quality Improvement Plan (CQIP) to the State of Washington, which sets forth the Center's
23 commitment to quality improvement efforts designed to ensure patient safety and quality as discussed

1 below. Compliance with the CQIP includes an incident reporting system, weekly meetings to review
2 and resolve incidents, a quarterly patient safety committee and a quarterly quality committee
3 meetings.

4 33. Opco is also fully accredited by the American College of Radiation Oncology (ACRO),
5 effective December 1, 2016 through November 30, 2019. ACRO is a voluntary accreditation
6 organization which requires a facility to comply with the highest level of nationally-recognized
7 quality and safety standards. Opco dedicates significant internal resources to maintaining substantial
8 compliance with the requirements of applicable regulatory agencies in order to identify and correct
9 any deficiencies. The Center has no prior safety incidents that required notification to any state or
10 other authority.

11 34. In compliance with the its Coordinated Quality Improvement Plan (CQIP) filed with
12 the State of Washington, the Center maintains a variety of internal safeguards to ensure the highest
13 level of safety and patient experience. These safeguards include the following:

- 14 a. A Quality Committee;
15 b. A Patient Safety Committee;
16 c. A Radiation Safety Committee;
17 d. A Radiation Oncology Incident Learning System (RO-ILS) through which staff
18 may report process deviations and patient or staff safety incidents;
19 e. An Event Review Team which conducts weekly reviews of any reports by staff;
20 f. A Process Improvement Committee for the continued discussion and
21 implementation of processes for regular improvement to patient safety and
22 efficiency;
23 g. A Patient Feedback Committee that reviews patient comments and implements
changes to maintain and improve patient experience;
h. Extensive quality assurance processes at every stage of patients' treatment
planning and delivery;
i. Regular staff trainings.

22 35. The Center also maintains internal policies related to patient privacy and informed
23 consent to address potential patient concerns. The Center's patients have multiple communication

1 mechanisms in order to provide feedback and voice any concerns, including direct communication
2 with on-site staff. The Center also maintains a process to review and address patient feedback as
3 appropriate.

4 36. The Center consistently maintains high patient satisfaction levels. In a patient
5 satisfaction survey conducted by Press Ganey, a national healthcare improvement solutions company,
6 over the past 18 months, the Center scored in the 99th percentile for patient satisfaction compared to
7 other nationally recognized cancer treatment centers. The Center's commitment to high quality of
8 care, safety, and patient satisfaction is fundamental to its growth strategy, and will continue during
9 this Chapter 11 and beyond.

10 37. The Debtors seek entry of an order determining that the appointment of a patient care
11 ombudsman is unnecessary in these Chapter 11 cases. The purpose of the Debtors' Chapter 11 cases
12 and their Plan is to restructure certain the debts of the Senior Secured Lenders, IBA, and SCCA, and is
13 unrelated to any matters involving patient care. The Chapter 11 cases will have no impact on any
14 patient-related services and no effect on the Center's operations with respect to patient care (and with
15 respect to patient rights), which will remain unaffected and continue uninterrupted in the ordinary
16 course of the Center's business. There are both government oversight mechanisms and internal
17 processes to safeguard and protect the Center's patients. The Center has maintained a strong and
18 high-quality patient care record. The Center is current on all operating costs and liabilities, so there is
19 no risk to continued ordinary course services for patient care and support.

20 38. Finally, the timing upon which the Debtors seek confirmation of the Plan further
21 minimizes the need for a patient care ombudsman.

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DECLARATION OF ANNA KARIN ANDREWS IN
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40. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Anna Karin Andrews
Anna Karin Andrews

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